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## Durable Solutions For Refugees: Principles And Implementation Strategy Of A General Framework

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Refugees count on 3 durable solutions: 1) local integration, 2) resettlement and 3) voluntary repatriation. They “allow them to rebuild their lives”<sup>[1]</sup> and “to live their lives in dignity and peace”<sup>[2]</sup>.

Durable solutions are a key component of the refugee regime<sup>[3]</sup>, as they are instrumental for assisting refugees in **accessing either protection or rights**. They have to be seen as protection tools.

Refugee protection should not be divided into what happens before RSD and after it. A dichotomy between **refugee protection and durable solutions** should not exist. They need to be seen as **mutually reinforceable**: durable solutions are instrumental for the protection of all rights refugees are entitled to under refugee law and human rights law; and protection is a goal of durable solutions ascertaining rights throughout refugeehood.

Refugee protection needs to be seen in a more holistic manner, encompassing traditional refugee protection topics and durable solutions.

There are no legal entitlements to durable solutions in International Refugee Law<sup>[4]</sup>; they are not rights *per se* and remain at the discretion of states. This imposes challenges, as, although the international community needs to work with durable solutions as “answers” to refugee conditions, core aspects of them are still rather feeble<sup>[5]</sup>.

In light of this, establishing a general framework for durable solutions is a necessary proposal<sup>[6]</sup>. It would aid in clarifying (i) what rights refugees are entitled to, (ii) the policies to guarantee them; and (iii) how durable solutions should be sought and applied in a principled way.

We propose **8 principles** that a general framework for durable solutions should be based on:

**1) Perceiving durable solutions as protection** – An idea so vital that it has to be at the basis of the framework (foundation)<sup>[7]</sup> but also an aim (i.e. a principle). Traditional refugee protection and durable solutions need to co-exist.

**2) Respecting** the human rights principle of **non-discrimination** – Different solutions can be applied to different scenarios, but any difference in treatment needs to be justified and always be based on the best interests of refugees. Non-discrimination needs to be present throughout refugeehood.

**3) Commitment to not establishing limitations on human rights** – Integral protection is the aim, and the most comprehensive protection should always be the goal. Refugees should not suffer excessive or unjustified restrictions on their human rights because of their refugee condition.

**4) Balancing States’ interests and refugees’ needs** – This is part of the goal of the framework but needs to also figure as an aim (i.e. principle), as it is a guideline when looking for solutions. Benefiting States, local host communities and refugees seem to be the better way forward in securing long-term adequate solutions<sup>[8]</sup>.

**5) Prioritising the best interests of refugees** – if respect for principle 4 in its entirety is not possible and a choice between States’ interests and refugees’ needs is in order; the protection of refugees needs to be a priority.

**6) Involving refugees** in seeking and implementing durable solutions – Refugees should have an active part in the decisions on the solutions for their cases, thus respecting not only autonomy and individuality, but also increasing the chances of successful solutions through empowerment. The best mechanisms to use to give a voice to refugees needs to be sought on a case-by-case basis.

**7) Seeing durable solutions as part of a non-hierarchical toolbox** – No *a priori* preferences among the existing durable solutions should guide action and options in each case. All possibilities need to be taken into consideration to find the most adequate durable solution in a particular situation.

**8) Choosing the best solution for each case** – Taking into account particularities and peculiarities as much as possible and to address them in a principled way. This would entail, at the very least, the incorporation of a gender, age and diversity approach in all solution-seeking actions; and would allow for the inclusion of other perspectives on vulnerabilities and particular situations of refugees.

Regarding **implementation**, it seems that the best strategy would be to start by means of **soft law** instruments. The general framework would be based on hard International Human Rights Law, but be implemented through soft law instruments. A

pathway in this sense would be the adoption of **guiding principles on durable solutions**, in the same model as there is for Internally Displaced Persons (IDPs), for example.

In light of the current complex migration scenario, focusing on durable solutions may be relevant in finding ways to not only manage the “crisis” but also to enhance the protection of refugees. A general framework on durable solutions, such as the one outlined above, is a positive step in this direction.

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[1] See: <http://www.unhcr.org/en-us/solutions.html>

[2] Ibid.

[3] “*Seeking permanent solutions*” is stated as a function of UNHCR, in its Statute, article 1.

[4] TÜRK, Volker; DOWD, Rebecca. Protection Gaps. In: FIDDIAN-QASMIYEH, Elena; LOESCHER, Gil; LONG, Katy; SIGONA, Nando. *The Oxford Handbook of Refugee and Forced Migration Studies*. Oxford: Oxford University Press, 2014. p. 284-85.

[5] For some of the challenges that durable solutions currently face see: MADUREIRA, André de Lima; JUBILUT, Liliana Lyra. *Durable Solutions: 5 implementation challenges and possible pathways for improvement*. Refugee Research Blog, July 2016. Available at: <http://refugeereseachblog.org/durable-solutions-5-implementation-challenges-and-possible-pathways-for-improvement/>

[6] For the first proposal of said framework see: JUBILUT, Liliana Lyra; MADUREIRA, André de Lima. *Why not a general theory for durable solutions for refugees*. 1<sup>st</sup> Annual Conference of the Refugee Law Initiative – The future of International Refugee Law. London, 30 of June, 2016. Available at: <http://www.sas.ac.uk/sites/default/files/files/RLI/Why%20not%20a%20general%20theory%20for%20durable%20solutions%20for%20refuge>

[7] For the foundations of the general framework being proposed see: JUBILUT, Liliana Lyra; MADUREIRA, André de Lima. *Thinking long –term: A foundational framework for durable solutions for refugees*. Oxford Human Rights Hub Blog, 2016 (forthcoming)

[8] Ibid.

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